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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/268,892	03/16/1999	GALEN R. HARTFIELD	D-43025-01	9118

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EXAMINER

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ART UNIT PAPER NUMBER

2881

DATE MAILED: 08/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/268,892

Applicant(s)

HARTFIELD

Examiner

K. MUYEN

Group Art Unit

2881

Me

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 02-26 and 06-17, 2002
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Dispositi n of Claims

- ☒ Claim(s) 1-10, 13-15 and 17-37 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10, 13-15 and 17-37 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Applicati n Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☒ Other the article of Regulla et al. is attached.

Office Action Summary

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The final rejection, applied to claims 1-5, 7-10, 13-15, 17-23, 27, 29-30, 32 and 35-37 under 35 U.S.C. 102(b) as being anticipated by Morita et al. and claims 6, 24-26, 28, 31 and 33-34 under 35 U.S.C. 103(a) as being unpatentable over Morita et al., is now withdrawn because the term package is not disclosed in the Morita et al. Claims 1-10, 13-15 and 17-37 are still rejected by Regulla et al. (Dosimetry by ESR spectroscopy of Alanine. See the following action.

Objected Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the package containing a representative reference sample which is different to the package containing the authenticating agents for comparing the different two packages as recited in claim 22; and a paperboard, a chipboard and a cardboard as recited in claim 35 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Rejection Under 35 U.S.C. 112, Second Paragraph

Claims 17-20 and 22-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 is indefinite for reciting the limitation "a representative reference sample of the package" in line 5. How are the reference sample and the agents in the same package that are detected? And how are the two spectral responses of the reference sample and the agents that are compared after they are detected?

→ Claim 36 is indefinite for reciting the limitation "100 ppm". What is the ppm? And how is the amount of the agent relative to the unit of ppm?

Rejection Under 35 U.S.C. 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-8, 10, 13-15, 17-23 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Regulla et al. (Dosimetry by ESR spectroscopy of Alanine).

Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) disclose a GSF alanine assembly which includes each protection capsule serves as a radiation buildup cap, a packaging material and contains 3-5 alanine samples (see fig. 15 and lines 37-44 of right col. of page 1113) for forming detectable free radicals upon irradiation. The samples having alanine, amino acids and food are irradiated by photons, neutrons, or electron beams (see the abstract and introduction parts). Means for comparing the spectral response for the irradiated package portion to the characteristic spectral response to determine whether the package to be authenticated being

authentic is considered to be inherent in the Regulla et al. (Dosimetry by ESR spectroscopy of Alanine), as Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) disclose comparing the spectral responses of the two different samples or the sample with reference sample (see fig. 2 and section "Quantitative analysis of ESR spectra on right col. of page 1103 to left col. of page 1104).

Rejection Under 35 U.S.C. 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 24 and 27-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Regulla et al. (Dosimetry by ESR spectroscopy of Alanine).

Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) disclose all the features as discussed above except a polymeric packaging film as recited in claims 3 and 9; a sugar as recited in claim 24; a polymeric film having at least one layer comprising ethylene homopolymer as recited in claim 27; a polymeric film having at least one layer comprising ethylene/C₃-C₂₀ alpha-olefin copolymer as recited in claim 28; a polymeric film having at least one layer comprising ethylene/vinyl alcohol copolymer as recited in claim 29; a polymeric film having at least one layer comprising ethylene/(meth)acrylic acid copolymer as recited in claim 30; a polymeric film having at least one layer comprising ethylene/C₁-C₂₀ ester of (meth)acrylic acid copolymer as recited in claim 31; a polymeric film having at least one layer comprising ethylene/vinyl acetate copolymer

as recited in claim 32; a polymeric film having at least one layer comprising polyamide as recited in claim 33; and a polymeric film having at least one layer comprising ionomer as recited in claim 34; a substance selected from the group consisting of paperboard, chipboard, and cardboard as recited in claim 35; an amount of the agent in the range from about 100 ppm to about 5 weight percent based on the weight of the packaging material as recited in claim 36; and a hot blown film as recited in claim 37.

Using the sugar as an authenticating agent is considered to be obvious variation in design, since it well known in the art to use such agents as the sugar in the food or beverage product for testing the product, thus would have been obvious to one skilled in the art to use the sugar in the Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) dosimeter for testing the product.

Using the polymeric film having the materials such as ethylene homopolymer, ethylene/C₃-C₂₀ alpha-olefin copolymer, ethylene/vinyl alcohol copolymer, ethylene/(meth)acrylic acid copolymer, ethylene/C₁-C₂₀ ester of (meth)acrylic acid copolymer, ethylene/vinyl acetate copolymer, polyamide or ionomer; a substance selected from the group consisting of paperboard, chipboard, and cardboard; or a hot blown film for packaging the authenticating agent is also considered to be obvious variation in design, since it well known in the art to use the material such as ethylene homopolymer, ethylene/C₃-C₂₀ alpha-olefin copolymer, ethylene/vinyl alcohol copolymer, ethylene/(meth)acrylic acid copolymer, ethylene/C₁-C₂₀ ester of (meth)acrylic acid copolymer, ethylene/vinyl acetate copolymer, polyamide or ionomer; a substance selected from the group consisting of paperboard, chipboard, and cardboard; or a hot blown film for packaging

elements, thus would have been obvious to one skilled in the art to use the polymeric film having the materials such as ethylene homopolymer, ethylene/C₃-C₂₀ alpha-olefin copolymer, ethylene/vinyl alcohol copolymer, ethylene/(meth)acrylic acid copolymer, ethylene/C₁-C₂₀ ester of (meth)acrylic acid copolymer, ethylene/vinyl acetate copolymer, polyamide or ionomer; a substance selected from the group consisting of paperboard, chipboard, and cardboard; or a hot blown film in the Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) dosimeter for packaging the authenticating agent.

Applying the amount of the agent in the range from about 100 ppm to about 5 weight percent based on the weight of the packaging material is also considered to be obvious variation in design, since each product is needed the different amounts of the agent to test the product, thus would have been obvious to one skilled in the art to apply the amount of the agent in the range from about 100 ppm to about 5 weight percent based on the weight of the packaging material in the Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) dosimeter for testing the products.

Applicant's arguments filed on February 26 and June 17 2002 have been fully considered but they are not persuasive in view of the foregoing reasons.

REMARKS

It is noted that the article of Regulla et al. (Dosimetry by ESR spectroscopy of Alanine) is filed by Applicant on the PTO-1449 indicating pages 1101-1114, but the examiner's record has no page 1112. Therefore, applicant is requested to provide the page 1112. The fig.15 located on page 1111 is attached herein.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner *Kiet T. Nguyen* whose telephone number is **(703) 308-4855**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-0956**. The fax phone number for the organization where this application or proceeding is assigned is **(703) 308-7723**.

K.T.N/Primary
August 25, 2002



**KIET T. NGUYEN
PRIMARY EXAMINER**